



STATE BOARD OF EQUALIZATION

July 27, 1950

Gentlemen:

We have reviewed our files and the enclosures forwarded with your letter of January 23 with respect to your client's petition for redetermination of our determination against it of August 17, 1949.

Your client's petition for redetermination appears to be based on several grounds, as follows:

1. That it performed a service and that x-ray pictures were not "furnished to a user" within the meaning of Paragraph C of Sales and Use Tax Ruling 23.
2. That said Paragraph C refers only to x-ray pictures while many of the tests of parts for the X----- were by means of magnetic processes, gamma ray inspection, and visual inspection.
3. That under the terms of the prime contracts of X----- companies with the X-----, the title to all materials intended for use or incorporation in the vessels passed to the United States upon delivery to the prime contractor and that the imposition of the sales tax constitutes an unconstitutional tax upon the United States.

The affidavit dated January 23, 1950, executed by X-----, a partner, states that copies of their contracts with X----- have been lost but that his recollection is that the contracts provided for his firm to furnish equipment, personnel, supplies, and engineering services, consisting of x-ray and gamma ray examinations of pipe and flange welding, and advise on control and elimination of defects discovered. It is also stated that the films produced were of no value to anyone but the engineer making the analysis and were not used by the shipyards for any purpose other than computing the amount due under the contract.

The affidavit is apparently in support of your client's first contention, i.e., that it performed a service and is not a retailer of x-ray pictures. The following represents our views with respect to each of the points advanced by your client.

1. Examination of your client's contract with the X----- by our district office staff revealed that your client agreed to furnish x-ray pictures as

required at a stipulated price for each picture and that the shipyard would furnish quarters and facilities for setting up its equipment for taking the pictures. Vouchers of the X----- and the X----- indicate that their remittances to your client were in payment of the purchase price of x-ray pictures. It is our opinion that the above facts require the conclusion that your client produced and sold x-ray pictures to the shipyards.

2. That Paragraph C of Ruling 23 refers only to x-ray pictures does not appear to preclude the application of the tax to the retail sale of pictures taken by other methods. The test would appear to be whether or not a sale of tangible personal property occurred. The ruling is interpretative of the law with respect to sales of x-ray pictures but does not purport to exclude sales of other types of property. Thus, the retail sale of a picture produced by exposure of the film to gamma rays would be subject to the tax to the same extent as the retail sale of an ordinary x-ray picture.

Our determination against your client is based upon our examination of your contracts with the X----- and the X----- and of the vouchers purporting to cover payments for x-ray pictures purchased from your client. Unless your client furnishes us with his books and records, or other evidence, supporting its contention that charges for visual inspections are included in the measure of the tax, and the amount thereof, we are unable to recommend any adjustment upon this ground.

3. Our information indicates that on and after X-----, the contracts of X----- and X----- with the X----- were lump sum contracts under which the X----- did not acquire title to property not becoming a component part of the vessels. As indicated by the Notice of Determination, our determination covers only periods subsequent to X----- ----- . We, therefore, are of the opinion that your client's sales of x-ray pictures are not exempt as sales to the United States.

In view of the foregoing conclusions we are unable to recommend any adjustment upon redetermination of the tax. As your client has requested a Board hearing in Sacramento, this matter will be placed on the Board's schedule unless you have additional evidence to furnish us or now wish to waive a hearing. So that you may advise us of your client's desires, we shall delay placing this matter in our schedule of Board hearings for another thirty days.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:HB